

UNITED STATES TAX COURT
WASHINGTON, DC 20217

J. DAVID GOLUB,)
)
Petitioner,)
)
v.) Docket No. 18530-16 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This case involves the collection of a penalty due from petitioner for the taxable year 2008 and is before the Court on respondent’s Motion for Summary Judgment, with a supporting declaration, filed pursuant to Rule 121.¹ Respondent’s motion includes a request that the Court impose an additional penalty on petitioner pursuant to section 6673(a). Petitioner filed a Response opposing respondent’s motion for summary judgment, with a supporting affidavit.

Background

Petitioner is no stranger to the Court. In Golub v. Commissioner, T.C. Memo. 1999-288 (docket No. 26507-95), the Court sustained respondent’s determination of income tax deficiencies for the taxable years 1991 and 1992 and imposed a penalty of \$10,000 on petitioner under section 6673(a). Petitioner’s untimely appeal from the Court’s decision was dismissed.²

Respondent subsequently filed a Federal tax lien against petitioner in an effort to collect his unpaid tax liability for 1991. Petitioner again invoked the

¹Rule references are to the Tax Court Rules of Practice and Procedure. Unless otherwise indicated, section references are to sections of the Internal Revenue Code, as amended.

²See Golub v. Commissioner, No. 00-1462, 2001 WL 376501 (D.C. Cir. March 7, 2001).

Court's jurisdiction by filing a petition for review of the lien action at docket No. 6191-06L. The Court rejected petitioner's challenge to the lien action and entered an Order and Decision in respondent's favor in 2008. Petitioner's attempt to appeal the Court's decision in that case was rejected by the U.S. Court of Appeals for the Second Circuit because petitioner had failed to comply with that court's earlier sanctions orders.

Petitioner continued to attempt to dispute his tax liability for 1991 by overstating the amount of his estimated tax payments for the taxable year 2008. As a result, respondent proposed to proceed with a levy action for 2008 and petitioner again invoked the Court's jurisdiction to review the matter. In Golub v. Commissioner, T.C. Memo. 2013-196 (docket No. 8431-12L), the Court rejected petitioner's convoluted arguments, sustained the proposed levy action, and imposed a penalty on petitioner pursuant to section 6673(a) for 2008. Notably, the Court's memorandum opinion in Golub v. Commissioner, T.C. Memo. 2013-196, issued August 27, 2013, stated that the Court intended "to impose a penalty in the amount of \$15,000 under section 6673(a)(1)." When the Court entered its Order and Decision at docket No. 8431-12L on August 30, 2013, however, the Court ordered petitioner "to pay a penalty to the United States in the amount of \$10,000." Petitioner did not file a notice of appeal challenging the Court's decision and it is now long since final. See sec. 7481.

The present action concerns respondent's attempt to collect the section 6673 penalty that the Court imposed on petitioner at docket No. 8431-12L. The record reflects that on April 27, 2015, the IRS assessed a penalty of \$15,000 against petitioner for the taxable year 2008 and sent him a notice of balance due. Petitioner failed to remit payment. On January 4, 2016, respondent sent to petitioner a Notice CP92, Seizure of Your State Tax Refund and Notice of Your Right to a Hearing, for the taxable year 2008. Petitioner subsequently filed with respondent's Office of Appeals (Appeals Office) a timely request for an administrative hearing under section 6330. After reviewing petitioner's request for an administrative hearing, the Appeals Office informed petitioner by letter dated March 11, 2016, that it considered his request to be frivolous and invited him to submit a valid challenge to the proposed collection action. Unfortunately, petitioner continued to espouse frivolous constitutional arguments throughout the administrative review process.

On July 22, 2016, the Appeals Office issued to petitioner a notice of determination sustaining the proposed seizure of his state tax refund. Petitioner invoked the Court's jurisdiction by filing a timely petition for review of the matter

under section 6330. The petition includes allegations challenging both petitioner's income tax liability for 1991 and the Court's imposition of the section 6673(a) penalty for 2008. At the time the petition was filed, petitioner resided in New York.

The Court conducted a hearing on this matter on September 20, 2017 (discussed in more detail below). On October 12, 2017, respondent filed a status report, accompanied by a transcript of petitioner's account for 2008, current up to October 23, 2017, showing that respondent abated \$5,000 of the original assessment of \$15,000, leaving a balance due on the penalty of \$6,041.67, and interest of \$693.72, for a total outstanding account balance of \$6,735.39.³

Discussion

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits * * *, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). As discussed in detail below, we conclude that there is no dispute as to any material fact and respondent is entitled to a decision sustaining the collection action.

Section 6331(a) authorizes the Secretary to levy upon property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to unpaid tax only if the Secretary has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires that the written notice include the amount of the unpaid tax and the taxpayer's right to an administrative hearing.

The Appeals Office is charged with conducting collection review proceedings under section 6330 and must verify that the requirements of any applicable law and administrative procedure have been met in processing the taxpayer's case. Sec. 6330(c)(1), (3)(A). The Appeals Office also must consider

³The transcript of account shows that respondent has applied petitioner's overpayments for other taxable years to offset a portion of the balance due for the taxable year 2008.

any issues raised by the taxpayer, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A), (3)(B). A taxpayer may challenge the existence or amount of his underlying tax liability if he did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

Section 6330(d)(1) grants this Court jurisdiction to review the administrative determination made by the Appeals Office. Where the validity of the underlying tax liability is properly at issue in a collection review proceeding, the Court will review the matter de novo. Giamelli v. Commissioner, 129 T.C. 107, 111 (2007). If the taxpayer's underlying tax liability is not in dispute, we review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

At the hearing of this matter conducted on September 20, 2017, the Court pointed out that, contrary to the statement in the Court's opinion in Golub v. Commissioner, T.C. Memo. 2013-196, issued August 27, 2013, that the Court intended "to impose a penalty in the amount of \$15,000 under section 6673(a)(1)", the Court's Order and Decision entered at docket No. 8431-12L on August 30, 2013, imposed a penalty of \$10,000 on petitioner for the taxable year 2008.⁴ Respondent acknowledged that the Court's Order and Decision is controlling and that the assessment of \$15,000 entered against petitioner for the taxable year 2008 was incorrect.⁵ Respondent's status report filed October 12, 2017, includes a transcript of petitioner's account for the taxable year 2008 showing that respondent has abated \$5,000 of the original assessment (reduced the assessment to \$10,000) and computed interest due on the reduced assessment.

The record shows that the requirements of all applicable laws and administrative procedures have met as required by section 6330(c)(1). See

⁴Petitioner did not raise this issue during the administrative proceedings or in any of his filings with the Court.

⁵There is no indication that respondent's erroneous assessment was anything other than an inadvertent mistake.

Lunsford v. Commissioner, 117 T.C. 183 (2001). Inasmuch as petitioner failed to raise a spousal defense, make a valid challenge to the appropriateness of respondent's intended collection action, or offer alternative means of collection, these issues are deemed conceded. Rule 331(b)(4). Considering all the circumstances, we conclude that the seizure action balances the Government's need for the efficient collection of taxes with any concerns that the collection action be no more intrusive than necessary.

Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. Petitioner clearly instituted this proceeding primarily for purposes of delay. Nevertheless, considering that the initial assessment was incorrect and required adjustment, we will not impose a penalty on petitioner pursuant to section 6673(a)(1).

Accordingly, upon due consideration and for cause, it is

ORDERED that respondent's motion for summary judgment, filed April 24, 2017, is granted in that respondent is entitled to judgment as a matter of law sustaining the collection action. It is further

ORDERED that respondent's motion for summary judgment, filed April 24, 2017, is denied in that the Court will not impose a penalty on petitioner in this case pursuant to section 6673(a). It is further

ORDERED AND DECIDED that respondent may proceed to collect from petitioner the unpaid balance of the penalty imposed by the Court under section 6673(a) for the taxable year 2008 and interest due on that amount.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **OCT 17 2017**